

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Spanish Fort Post Office
Spanish Fort, AL 36527

Docket No. A2021-1

**UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO
PETITIONER'S MOTION TO COMPEL AND SUPPLEMENT TO APPLICATION
FOR SUPENSION**
(January 21, 2021)

The Petitioner, the City of Spanish Fort, filed on January 14, 2021, a Motion to Compel and Supplement to Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office (hereafter Motion). Pursuant to 39 C.F.R. § 3010.160(b), the United States Postal Service (Postal Service) files this Answer in Opposition to the Petitioner's Motion. The Petitioner's Motion seeks two types of relief: (1) to suspend the Postal Service's determination to close the Spanish Fort Community Post Office (CPO); and (2) to compel the Postal Service to file an administrative record of that determination. The first line of relief was mooted by the Postal Regulatory Commission's (Commission) Order No. 5815, issued on January 14, 2021, denying the Petitioner's Application for Suspension. The Petitioner's Motion nonetheless makes certain novel claims that this Answer in Opposition disputes. The Postal Service also denies that it is obligated, in cases like the present one, to file an administrative record before the Commission.

I. The Postal Service Is Not Obligated to File an Administrative Record When Contracts for CPOs Expire

The Petitioner, in its Motion, asserts that the Postal Service "did not file

a copy of the administrative record in violation” of the Commission’s Notice and Order Accepting Appeal and Establishing Procedural Scheduling.¹ The Petitioner further claims that “[a]t a minimum, the determination of whether a Post Office is a ‘sole source’ and subject to review by the Postal Regulatory Commission should be made with a complete administrative record including all relevant facts which can be reviewed by the Postal Regulatory Commission prior to the closing of the Post Office”²; and that “[w]ithout the administrative record, the Postal Regulatory Commission has no way to determine whether or not the Postal Service is acting fairly in [its rejection of the current supplier’s bids] and in the solicitation of bids and review of responses.”³

The Petitioner’s demands for the administrative record are misplaced. The Postal Service has consistently declined to produce an administrative record in appeals to closures of contractor-operated retail units, and the Commission has consistently accepted the Postal Service’s posture. Indeed, in not one recent appeal of such a closure has the Postal Service filed an administrative record—a fact that has not impeded the Commission from granting the Postal Service’s Motions to Dismiss.⁴ The Commission acted properly in all instances.

Administrative records are compiled during the discontinuance of Postal Service operated Post Offices, not supplier-owned and supplier-operated contractual

¹ Motion to Compel and Supplement to Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office (hereafter Motion), January 14, 2021 (Motion), at 1.

² *Id.* at 2.

³ *Id.* at 3.

⁴ See Docket Nos. A2020-1 (Belville Post Office, Belville, GA); A2017-2 (Rio Nido Post Office, Rio Nido, CA); A2012-88 (Alplaus Post Office, Alplaus, NY); A2015-1 (Careywood Post Office, Careywood, ID); A83-30, *In re Knob Fork*, West Virginia 26579, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404 (b) (5), January 18, 1984 (Knob Fork).

units like the Spanish Fort CPO. The creation of such records, as delineated by the PO-101 Handbook to discontinuances, entails a range of procedures (e.g., public meetings and requests for comments) which the Postal Service need not implement when contractual arrangements like the present one expire.⁵ If the need for an administrative record does not arise, it is because 39 C.F.R. § 3021.21, which obligates the Postal Service to file an administrative record 10 days of the date of posting of a Petition for Review on the Commission's website, applies to appeals of Postal Service determinations to close or consolidate Post Offices, not to contractor-operated retail units.⁶ Confirmation of this can be found in the Postal Service's PO-101 Handbook to discontinuances, which requires that an administrative record undergird final determinations to discontinue "a Post Office, classified station, or classified branch"⁷—an exhaustive list that pointedly does not include the "Contractor Operated Retail Facilities" described in section 232.3, under the rubric of "Service Alternatives."⁸ The Commission's own precedent acknowledges this distinction to be a reasonable one.⁹ The Postal

⁵ PO-101 Handbook, Section 33: "The official record includes all information that the district manager has considered, and the decision must stand on the record. No written information or views submitted by customers may be excluded, whether they support the proposal or not. The discontinuance process can be lengthy, and more than one discontinuance coordinator may be involved in the investigation. The official record must be updated and maintained in an accurate and timely manner to assist new coordinators and others who review record documentation." See also: Postal Service Publication 156, Guide to Contract Postal Units for Postal Service Employees, January 2014; United States Postal Service, Contract Postal Units, <https://about.usps.com/suppliers/becoming/contract-postal-unit.htm> (last visited Jan. 5, 2021).

⁶ 39 C.F.R. § 3021.

⁷ PO-101 Handbook, Appendix A – Glossary of Terms.

⁸ PO-101 Handbook. See also PO-101 Handbook, Appendix A – Glossary of Terms.

⁹ See Docket Nos. A2020-1 (Belville Post Office, Belville, GA); A2017-2 (Rio Nido Post Office, Rio Nido, CA); A2012-88 (Alplaus Post Office, Alplaus, NY); A2015-1 (Careywood Post Office, Careywood, ID); A83-30, *In re Knob Fork, West Virginia 26579*, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404 (b) (5), January 18, 1984 (Knob Fork).

Service's interpretation of 39 C.F.R. § 3021.21 as excluding contractor-operated retail units is therefore entitled to deference.

Finally, the Petitioner avers that “when the only Post Office in the corporate limits of a municipality is closed, heightened review and scrutiny should be given by the Postal Service and the Postal Regulatory Commission.”¹⁰ The Petitioner appears to suggest that this wholly novel standard of review alone compels the disclosure of an administrative record. This argument falls short on at least two counts. First, as the Postal Service explains at length in its Motion to Dismiss, the Spanish Fort CPO is not a Post Office, but is rather a contractor-operated retail unit.¹¹ Secondly, as the modal verb “should” implies, and as the lack of citation to any precedent, statute or regulation further suggests, no such standard of review exists. The Commission does not now, nor has it ever, applied heightened scrutiny when a CPO slated for discontinuance happens to be the only retail unit in an incorporated municipality.¹² The Commission has historically responded to the concerns raised by such discontinuances by activating the “sole source” exception, discussed below.

II. The Petitioner Misconstrues the Sole Source Exception and Misapplies it to the Present Case

The Petitioner, in support of its claim that the Spanish Fort CPO

¹⁰ Motion, at 2.

¹¹ United States Postal Service Motion to Dismiss Proceedings, January 7, 2021, at 2-5.

¹² See Docket Nos. A2020-1 (Belville Post Office, Belville, GA); A2017-2 (Rio Nido Post Office, Rio Nido, CA); A2012-88 (Alplaus Post Office, Alplaus, NY); A2015-1 (Careywood Post Office, Careywood, ID); A83-30, *In re Knob Fork, West Virginia* 26579, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404 (b) (5), January 18, 1984 (Knob Fork). See *also* PRC Order No. 5815, Order Denying Application for Suspension, January 14, 2021.

constitutes the “sole source” of postal services to the Spanish Fort Community, cites to recent trends in population growth: “[T]he City of Spanish Fort is a growing municipality with approximately 10,000 residents, and the surrounding Spanish Fort community is home to another 10,000 plus residents. The City has experienced approximately 30.8% growth between 2010 and 2018, and it is expected that this level of growth will continue and possibly increase.”¹³ The Petitioner neglects to mention that all residents of Spanish Fort receive rural carrier service, which provides residents with convenient access to various postal services, including the purchase of stamps.¹⁴ Nor does the Petitioner acknowledge that the number of carrier routes in both Spanish Fort and neighboring Daphne have increased commensurately with the population’s size. Thus, from 2015 to 2021, the number of delivery routes in Spanish Fort increased from nine to twelve; likewise, and over the same span of time, the number of delivery routes in Daphne increased from nineteen to twenty-three. The ubiquity of rural delivery service, together with the availability of alternate channels of access like usps.com and the relative proximity of the Daphne Post Office, strongly support the Postal Service’s position: the Spanish Fort CPO does not constitute the sole source of postal services to the Spanish Fort community.

Against this conclusion, which sits comfortably within Commission precedent, the Petitioner asserts that “[d]ue to the size of the City of Spanish Fort and the location of access roads, some citizens would be required to drive

¹³ Motion, at 4.

¹⁴ United States Postal Service Motion to Dismiss Proceedings, January 7, 2021, at 5.

approximately 15 miles to the Daphne Post Office.”¹⁵ In prior rulings, the Commission has used the distance between retail units as a heuristic for deciding whether or not a discontinued CPO or CPU constitutes a “sole source” of postal services; it has not considered distances between retail units and the farthest flung loci within the relevant municipality.¹⁶ Indeed, the Petitioner’s own claim justifies this practice. Residents close to the border of a municipality—especially one covering a relatively wide area, like Spanish Fort—may be situated nearer to retail units in neighboring communities. To cite but one possible example among many: certain Spanish Fort addresses on Wales Lane sit at a driving distance of approximately 8.2 miles from the Spanish Fort CPO, 12.4 miles from the Daphne Post Office, and the 4.7 miles from the Post Office at the street address of 35387 AL-59 in Stapleton, AL. Measured by units of distance, the Stapleton Post Office should prove roughly twice as accessible to residents of these addresses than the Spanish Fort CPO.

III. Strong Policy Reasons Support the Postal Service’s Position that the Commission Lacks Jurisdiction to Consider the Appeal of a Contract Administration Decision for a Contract with a Third-Party CPO Operator.

As argued at length in the Postal Service’s Motion to Dismiss,¹⁷ the procedures imposed by 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation, and implementation.¹⁸

¹⁵ Motion, at 5.

¹⁶ See Docket Nos. A2020-1 (Belville Post Office, Belville, GA); A2017-2 (Rio Nido Post Office, Rio Nido, CA); A2012-88 (Alplaus Post Office, Alplaus, NY); A2015-1 (Careywood Post Office, Careywood, ID); A83-30, In re Knob Fork, West Virginia 26579, Commission Opinion Remanding Determination for Further Consideration 39 U.S.C. § 404 (b) (5), January 18, 1984 (Knob Fork).

¹⁷ United States Postal Service Motion to Dismiss Proceedings, January 7, 2021, at 13-14.

¹⁸ See 76 Fed. Reg. 41416-41417, Section I (July 14, 2011).

Applying the section 404(d) procedures to CPO contract decisions would provide contractors with a bargaining advantage over the Postal Service, giving rise to an imbalance in bargaining power, especially where a CPO operator is the only person in the community capable of operating the CPO. Such a CPO operator could extort premium compensation from the Postal Service in exchange for cooperation. Indeed, the facts of the present case exemplify these risks; for as explained in the Postal Service's Motion to Dismiss,¹⁹ both of the Postal Service's solicitation proposals garnered a single bid, each one from the current operator, proposing contractual terms outside of the Postal Service's acceptable compensation model (as well as reasonable business judgment).

CONCLUSION

For the reasons discussed above, the relief requested by the Petitioner in its Motion is not, as a matter of law, available to Petitioner and the Postal Service, therefore, respectfully requests that the Commission deny the Petitioner's Motion. The Postal Service also responds to these matters in greater detail in its Motion to Dismiss Proceedings and it incorporates by reference the arguments therein.

Respectfully submitted,

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¹⁹ United States Postal Service Motion to Dismiss Proceedings, January 7, 2021, at 4.

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January 21, 2021